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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,187	08/22/2001	Thierry Lucidarme	P-6230	3276
28465	7590	11/10/2005	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US LLP			AHN, SAM K	
P. O. BOX 64807			ART UNIT	
CHICAGO, IL 60664-0807			PAPER NUMBER	
			2637	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/869,187	Applicant(s) LUCIDARME ET AL. <span style="float: right;">(AM)</span>	
	Examiner Sam K. Ahn	Art Unit 2637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 10-12 and 17 is/are rejected.
- 7) ☒ Claim(s) 4-7, 9, 13-16, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 08/29/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *renouncing to receive the same information from at least one base station, but not all the base stations, of said plurality of base stations*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants explain that *partially dispensing with the macrodiversity mode* means "renouncing to receive the same information from at least one base station, but not all the base stations, of said plurality of base stations" (note under remarks, page 10, lines 12-14). However, the claims do not recite as such.

The claims recite, "*macrodiversity mode is **at least partially dispensed with** for the mobile station*", which encompasses the circumstance of *completely dispensed with the macrodiversity mode*. The definition of "at least partially dispensed" includes the event of "completely dispensed". Hence, as explained previously, Zhou teaches dispensing with the macrodiversity mode (S16 in Fig.9). Thus, the examiner maintains the rejection.

***Claim Objections***

2. Claim 19 is objected to because of the following informalities:

In claim 19, lines 5 and 10, "the receiving units" should be "the at least two receiving units". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhou et al. USP 6,539,009 B1 (Zhou) in view of Okawa et al. USP 6,842,422 B2 (Okawa).

Regarding claims 1 and 10, Zhou teaches a method and a control equipment for radio communication between a mobile station and a cellular-network infrastructure including a set of base stations, wherein the mobile station includes at least two receiving units for processing (see Fig.6), in macrodiversity mode, respective radio signals sent out by at least two separate base stations of said set of base stations and carrying identical information (note col.4, lines 49-57). Zhou further teaches wherein the macrodiversity mode (soft-handover) is at least

partially dispensed when specified conditions are fulfilled (determined by the peak level, at step S16, one base station is selected, note col.7, lines 17-36). Although one skilled in the art would attempt to design a system to support transferring high data rate when needed, Zhou does not explicitly teach wherein one or more base stations of said set of base stations is or are controlled to send to the mobile station at least two radio signals carrying different sets of information, and the mobile station is controlled to have its receiving units process these radio signals so as to receive said different sets of information. Okawa teaches one or more base stations of said set of base stations is or are controlled to send to the mobile station at least two radio signals (code channel 1 ~ code channel N, see Fig.5) carrying different sets of information, and the mobile station is controlled to have its receiving units (rake receiver) process these radio signals so as to receive said different sets of information (see CH-1 ~ CH-N in Fig.6). Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Zhou's system to incorporate the feature taught by Okawa of transmitting at least two radio signals carrying different sets of information after at least partially dispensing macrodiversity mode for the purpose of supporting high data rate transfer, as taught by Okawa (note col.2, lines 50-54).

Regarding claims 2 and 11, Zhou in view of Okawa teach all subject matter claimed, as applied to claim 1 or 10. Okawa further teaches wherein, said radio

carrying said different set of information are sent out by a single base station (see Fig.5).

Regarding claims 3 and 12, Zhou in view of Okawa teach all subject matter claimed, as applied to claim 2 or 11. Okawa further teaches wherein said base station, in the case of the down communication direction, operates with multiple communication channels (CH-1 ~ CH-N) defined by channel-separation codes being selected with spreading factors (13 in Fig.5) depending on information throughputs required respectively on the channels, with an overall constraint of orthogonality between the codes employed at every instant by the base station (note col.2, line 50 – col.3, line 4).

4. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhou et al. USP 6,539,009 B1 (Zhou) in view of Okawa et al. USP 6,842,422 B2 (Okawa) and Frodigh (cited previously).

Regarding claims 8 and 17, Zhou in view of Okawa teach all subject matter claimed, as applied to claim 1 or 10. Okawa further teaches wherein, said radio carrying said different set of information are sent out by a single base station (see Fig.5), however, does not explicitly teach wherein said different set of information are sent out by at least first and second separate base stations of said set of base stations.

Frodigh discloses wherein a mobile station is communicating with at least first and second separate base stations of a set of base stations (see Fig.1). Thus, it would have been obvious to one skilled in the art at the time of the invention to analyze that a mobile station is capable of receiving one information while communication with a first base station while the second base station might be sending a different set of information, such as in a case where another caller is placed on hold. The motivation to combine would be to increase the feature of the system having the function of placing another caller on hold while communicating with a first caller.

***Allowable Subject Matter***

5. Claims 4-7,9,13-16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claim 19 would be allowable if rewritten or amended to overcome the claim objections, set forth in this Office action.
7. The following is a statement of reasons for the indication of allowable subject matter:  
Present application discloses a method and apparatus in a macrodiversity mode wherein different spreading factors are used. However, prior art does not teach or suggest in combination the limitation of partially dispensing macrodiversity mode when an increase in data rate is required. And further, prior art does not teach or suggest in combination the limitation of from receiving same information through the

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combining means, disabling the combining means in order to receive different sets of information.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Ahn whose telephone number is (571) 272-3044. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

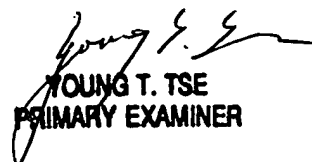
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR



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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam K. Ahn  
11/7/05



**YOUNG T. TSE**  
**PRIMARY EXAMINER**